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5 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 ANDREW CONEV,

8 Plaintiff,

9 v.

10 DEBRA BELLINGER, et al.,

11 Defendants.

Case No. C17-1725 RSM-BAT

**ORDER DECLINING SERVICE
AND GRANTING LEAVE TO
AMEND**

12 Andrew Conev, a Snohomish County Jail detainee filed a 28 U.S.C. § 1983 civil rights
13 complaint against Debra Ballinger, Nurse Meader, all Snohomish County Jail medical staff, and
14 the Snohomish County Jail. Dkt. 1. The Court declines to serve the complaint because it fails to
15 state a claim upon which relief may be granted, and is subject to dismissal. However, because
16 Mr. Conev is proceeding *pro se*, the Court grants him leave to file by **January 8, 2018**, an
17 amended complaint, or to show cause why the complaint should not be dismissed.

18 **FACTUAL ALLEGATIONS**

19 Mr. Conev alleges he is a Snohomish County Jail detainee, and that defendants have
20 disregarded his medical issues. Specifically, Mr. Conev claims before he was jailed, he was not
21 eating, and was malnourished. He contends he has been jailed 40 days, and is “still very
22 malnourished” and has headaches, nausea, insomnia, anxiety attacks and mood swings. Mr.
23 Conev alleges he has been “denied” by “Mr. D. Billenger” even though a nurse told Mr. Conev

1 he would receive a high calorie diet. Mr. Conev also alleges the jail has not provided adequate
2 care for his constipation problems. He claims he was provided medications (“pills”) and a high
3 fiber diet but they were not helpful. And finally Mr. Conev alleges the jail waited a week before
4 attending to an infected tooth.

5 DISCUSSION

6 To sustain a civil rights action under § 1983, Mr. Convev must show (1) he suffered a
7 violation of rights protected by the Constitution or created by federal statute, and (2) the
8 violation was proximately caused by a person acting under color of state or federal law. *See*
9 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991).

10 A. Liability of Parties

11 (1) Municipalities

12 Mr. Conev names Snohomish County Jail as a defendant. The jail is an agency that
13 normally cannot be sued under § 1983. *See Howlett v. Rose*, 496 U.S. 356, 365 (1990). The
14 proper defendant is Snohomish County. However, to sue the county, Mr. Conev must show the
15 county itself violated his rights or that it directed its employees to do so. *Bd. of County Comm’rs*
16 *of Bryan County v. Brown*, 520 U.S. 397, 404 (1994).

17 Under this theory of liability, the focus is on the county’s “policy statement, ordinance,
18 regulation, or decision officially adopted and promulgated by that body’s Officers.” *City of St.*
19 *Louis v. Praprotnik*, 485 U.S. 112, 121 (1988) (quoting *Monell*, 436 U.S. at 690). The county is
20 not liable for the acts of its employees under a respondeat superior theory of liability. *See Monell*
21 *v. Dept. of Soc. Servs.*, 436 U.S. 658, 694 (1978). Therefore, in order to sue Snohomish County,
22 Mr. Conev must allege facts showing that any constitutional deprivation he suffered was the
23 result of a custom or policy of the county.

1 **(2) Supervisory Liability**

2 Section 1983 supervisory liability cannot be based on respondeat superior. *See Monell*,
3 436 U.S. at 691. A § 1983 action may not be brought against a supervisor on a theory the
4 supervisor is liable for the acts of his or her subordinates. *See Polk County v. Dodson*, 454 U.S.
5 312, 325, 102 S.Ct. 445, 70 L.Ed.2d 509 (1981).

6 It is unclear whether Mr. Conev has named any defendants who acted in a supervisory
7 capacity; there are no allegations contained in the complaint showing this. To the extent the
8 complaint is premised upon the responsibility of an individual to supervise medical employees at
9 the Jail, Mr. Conev has failed to state a § 1983 claim. To state a claim against any individual
10 defendant, he must allege facts showing that the individual defendant participated in or directed
11 the alleged violation, or knew of the violation and failed to act to prevent it. *See Barren v.*
12 *Harrington*, 152 F.3d 1193, 1194 (9th Cir.1998), *cert. denied*, 525 U.S. 1154 (1999); *Ashcroft v.*
13 *Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1948 (2009) (vicarious liability is inapplicable to a § 1983
14 suit).

15 **B. Personal Participation – Eighth Amendment Claims**

16 It is also unclear from the complaint what acts defendants Billenger and Meader
17 performed that violated his rights. The complaint indicates Defendant Billenger “denied” but
18 does not specify what that involved, or how the denial harmed him. Likewise, the complaint does
19 not indicate what defendant Meader did to violate Mr. Conev’s rights. To obtain relief against a
20 defendant under 42 U.S.C. § 1983, Mr. Conev must prove that a particular defendant has caused
21 or personally participated in causing the deprivation of a particular protected constitutional right.
22 *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981); *Sherman v. Yakahi*, 549 F.2d 1287, 1290
23 (9th Cir. 1977). Mr. Conev must set forth specific facts showing a causal connection between

1 each defendant's actions and the harm allegedly suffered by plaintiff. *Aldabe v. Aldabe*, 616
2 F.2d 1089, 1092 (9th Cir. 1980).

3 The complaint does not meet these standards. Instead it alleged a denial of adequate
4 medical care. This is not sufficient to state an Eighth Amendment violation. Mr. Conev may file
5 an amended complaint to provide additional facts to support this claim, including the nature of
6 his injuries and which individual or individuals knew of his injuries and failed to provide
7 treatment.

8 CONCLUSION

9 The Court **DECLINES** to serve the amended complaint which as discussed above is
10 deficient. However, the Court grants plaintiff permission to submit an amended complaint to
11 attempt to cure the above-mentioned deficiencies by **January 8, 2018**. The amended complaint
12 must carry the same case number as this one. **If no amended complaint is timely filed, or if an**
13 **amended complaint is filed that is still deficient, the Court will recommend that this matter**
14 **be dismissed under 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim on which relief**
15 **can be granted.**

16 DATED this 18th day of December, 2017.

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18 BRIAN A. TSUCHIDA
19 United States Magistrate Judge
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